

### **REMARKS**

Claims 1-5, 14, 20-21, 23-26, and 29-32 have been amended, and dependent claims 9-10 and 27-28 have been canceled. New dependent claims 34-64 have been added. Written description support for these amendments is found throughout the original specification. No new matter has been added. Accordingly, claims 1-8, 11-14, 20-26, and 29-64 are currently pending, including independent claims 1 and 20.

Applicant thanks the Examiner for participating in a telephone interview on July 29, 2010, during which the amendments to independent claims 1 and 20 were discussed. It was agreed during the interview that amended claims 1 and 20 each distinguish the prior art of record, including the Maeda reference (US 5,681,265) and the Bester reference (US 6,196,969). Also, during the interview, the rejections of original dependent claims 2 and 3 were discussed so as to provide further clarity on the Examiner's positions recorded in the Office Action.

### **Specification**

The Cross-References to Related Applications section has been amended to correct a typographical error in which the present application was inadvertently referred to as an "International" application.

### **Drawings**

Applicants respectfully submit herewith substitute drawings including 23 sheets showing Figs.1-26. These drawings are intended to replace the 26 sheets showing original Figs.1-26 previously filed. No new matter has been added.

### **Claims 1-8, 11-14, and 48-64**

Independent claim 1 and particular dependent claims were rejected under 35 U.S.C. § 102(b) as being anticipated by Maeda. Also, independent claim 1 and particular dependent claims were rejected under 35 U.S.C. § 102(b) as being anticipated by Bester. ***As agreed during the July 29, 2010 interview***, each of the Maeda and Bester references fail to disclose a number of features recited in amended independent claim 1. For example, neither Maeda nor Bester disclose the claimed first, second and third retractor blades having the particular features recited

in claim 1. In another example, neither Maeda nor Bester disclose the claimed intradiscal shim element having the particular arrangement recited in claim 1. In yet another example, neither Maeda nor Bester disclose the claimed handle which is configured to simultaneously introduce said first, second and third retractor blades along the lateral, trans-psoas path toward the targeted spinal site in a closed position while the generally concave inner-facing surfaces of said first and second retractor blades engage with an outermost dilator of the dilator system.

Accordingly, independent claim 1 is patentable over the prior art of record, and prompt allowance is respectfully requested. Dependent claims 2-8, 11-14, and 48-64 are patentable for at least the same reasons as claim 1 and for the additional inventive combination recited therein.

#### Claims 20-26 and 29-47

Independent claim 20 and particular dependent claims were rejected under 35 U.S.C. § 102(b) as being anticipated by Maeda. Also, independent claim 20 and particular dependent claims were rejected under 35 U.S.C. § 102(b) as being anticipated by Bester. ***As agreed during the July 29, 2010 interview***, each of the Maeda and Bester references fail to disclose a number of features recited in amended independent claim 20. For example, neither Maeda nor Bester disclose the claimed intradiscal shim element that releasably mounts to a groove formed in the third retractor blade and that has the particular arrangement recited in claim 1. In another example, neither Maeda nor Bester disclose the claimed a first retractor extender element that releasably mounts to the first retractor blade and that has the particular arrangement recited in claim 20.

Accordingly, independent claim 20 is patentable over the prior art of record, and prompt allowance is respectfully requested. Dependent claims 21-26 and 29-47 are patentable for at least the same reasons as claim 20 and for the additional inventive combination recited therein.

#### **Request for Reconsideration**

Applicant submits that claims 1-8, 11-14, 20-26, and 29-64 are patentable over the prior art of record. Favorable consideration and allowance of the claims in this application is respectfully requested. In the event that no Notice of Allowance will be provided in the next communication, **the Examiner is cordially invited to telephone the undersigned attorney**

**prior to the next communication so that prosecution may be expedited with suggestions to advance prosecution.**

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the claim amendments herein do not signify concession of unpatentability of claims 1-5, 14, 20-21, 23-26, and 29-32 prior to the amendments herein. Applicant hereby specifically reserves the right to prosecute claims of different or broader scope in a continuation application. The Patent Office should infer no (i) adoption of a position with respect to patentability, (ii) change in the Applicant's position with respect to any claim or subject matter of the invention, or (iii) acquiescence in any way to any position taken by the Examiner, based on the amendments made herein.

The Applicant hereby authorizes the payment of the \$555.00 fee for a three-month extension of time and the \$754.00 fee for the excess claims to be charged to Deposit Account No.: 50-2040 for Customer No.: 30,328. No other fees are believed due at this time, however, in the event that there are any fees to be charged or payments to be credited, the Applicant hereby requests that any charges or credits be made to Deposit Account No.: 50-2040 for Customer No.: 30,328.

Respectfully submitted,  
NUVASIVE, INC.

Date: August 2, 2010

/Rory Schermerhorn/  
Rory Schermerhorn, Esq.  
Registration No. 58,148

NuVasive, Inc.  
7475 Lusk Boulevard  
San Diego, CA 92121  
Tel.: (858) 909-1845